



Water Use Options for Oil Well Development  
Montana Department of Natural Resources & Conservation  
04-19-2012

Introduction

This guide highlights options for parties involved with oil development to either: 1) obtain water legally available from a marketing entity; or 2) pursue legal authorization through a state-based water right. It also explains limitations based on location or the nature of water being sought.

**Montana law requires that water rights be established for all beneficial uses of water, including that used for oil well development (drilling and hydraulic fracturing).** Depending on location, new water rights or changes to existing water rights may apply. It is not permissible to appropriate water for oil well drilling/fracking purposes from an existing water right, unless that water right specifically permits the type of use (municipal use of water is an exception and is explained below).

Purchasing Water from Municipalities

Most municipalities hold a water right(s) with a purpose of "*municipal*." If the purpose is, in fact, "*municipal*," it is unique in Montana water law in that it includes multiple purposes such as domestic, irrigation, commercial and industrial. **A municipality may market water for oil development under its municipal purpose, if the point of sale (e.g. water depot) is within city boundaries or the historic place of use, and provided it does not expand its water right (i.e. the municipality cannot increase the amount of water, in flow rate or volume, associated with its water right).** If the municipality sets up a depot or station for supplying water outside of its historic place of use, for example one mile outside city limits, a change authorization is required from the Department before marketing water. A municipality should check with the Department prior to selling water to fully understand its water right.

Surface Water

**Permits – For new appropriations from surface water, a permit is required for oil well development purposes.** Permitting new uses of water is dependent upon the source and location. Some hydrologic basins have been closed to new water rights due to over-appropriation, while in other areas obtaining a new water right is possible. Consideration of the following should be taken:

- The following basins east of the continental divide are closed to new appropriations of water in some fashion, and obtaining a new surface water right for oil well development is either very difficult or partially restricted: Upper Missouri River Basin (upstream of Great Falls); Teton River Basin; Milk River Basin; Musselshell River; Jefferson River Basin; Madison River Basin; and others (call your DNRC Regional Office for site specific closure information). While new water rights may be difficult to obtain in these basins, with the possible exception of storing high spring flows, changing existing water rights is an option and explained below. A new appropriation to store high spring flows may be possible in some basins that are closed to other forms of new appropriations.
- The Missouri River mainstem below Great Falls to the North Dakota border is not closed to new appropriations and new water rights may still be acquired. However, limitations on use may

apply, and the responsibility for proving whether a new permit should be issued is on the applicant.

- The Yellowstone River mainstem is not closed to new appropriations (new water rights), however, limitations apply to certain reaches and in some cases a new water right may not be issued. Portions of this river are over-appropriated during certain times of the year.
- Other tributaries in eastern Montana may or may not be over-appropriated. Each source is unique and a determination of water availability is made on a case-by-case basis.
- Water Service Contracts issued by the U.S. Bureau of Reclamation apply to certain reaches of the Missouri River and Marias River. Other water service contracts may also be available on the the Yellowstone River below both Yellowtail and Tongue River reservoirs from the Crow and Northern Cheyenne Tribes. These contracts can be temporary in nature and a state-based water right is not required.
- Water may not be appropriated from a pond (e.g. stock pond) without a water right for oil development purposes, even for those ponds located on non-perennial drainages.

**Changes to Existing Water Rights** – Montana law allows the point of diversion, place of use, purpose of use or place of storage to be changed for existing water rights. However, approval from the Department is required prior to making the change. Changes may occur regardless of the legal status of the hydrologic basin (closed or non-closed).

- For oil well development purposes a change is necessary to the place of use and purpose of use of a water right, and possibly the point of diversion and place of storage. An agricultural-related water right (irrigation or stock water right) does not suffice for the purposes of appropriating water for oil well development, nor does an industrial water right. Assume in all instances that a Department-approved change will be required for oil well development.
- **Fracking of one oil well may take between 1-12 acre-feet of water.** Pursuit of existing water rights to change for fracking purposes should focus on water rights in sufficient quantities to meet the need.
- **The period of diversion is an important element of all water rights.** Irrigation water rights typically have a period of diversion throughout the growing season only. Therefore, year-round use for purposes of oil well development is not permissible in a change proceeding for most irrigation rights. An exception is if storage becomes a component of the changed water use, the period of use may be expanded to year-round.

### Groundwater

- **Exempt wells** - Outside specially-designated controlled groundwater areas groundwater appropriations of 35 gallons per minute or less, up to 10 acre-feet annually are exempt from the normal permitting requirements. If the use of water meets these criteria, regardless of the type of use, a water well or developed spring can be constructed and water put to use. Within 60 days of putting water to use, a notice must be filed with the Department. Combined appropriations from two or more groundwater developments cannot exceed the 35/10 limitation. This exemption may be limited in use to the industry because of the flow rate and volume restrictions.
- **Permitted wells** - Groundwater in excess of 35 gpm and/or 10 acre-feet must be permitted by the Department. In analyzing the proposed use, the Department will consider impacts to other

groundwater wells and hydraulically-connected surface waters, whether the basin is open or closed.

- If groundwater is proposed for use for oil well development inside a closed basin, the best alternative for permitting the use is purchase of an existing water right(s) or retirement of an existing right to mitigate surface water impacts.

#### General Information and Website

To obtain information related to specific water sources for oil well development please contact the appropriate regional office located on the back page. Refer to the following link for a guide to *Water Rights in Montana (2012)*:

<http://leg.mt.gov/content/Publications/Environmental/2012-water-rights-handbook.pdf>

### **WATER RESOURCES OFFICES**

- BILLINGS:** **ADDRESS:** AIRPORT INDUSTRIAL PARK, 1371 RIMTOP DR., BILLINGS MT 59105-1978  
**PHONE:** 406-247-4415 **FAX:** 406-247-4416  
**SERVING:** Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, and Yellowstone Counties
- BOZEMAN:** **ADDRESS:** 2273 BOOT HILL COURT, SUITE 110, BOZEMAN MT 59715  
**PHONE:** 406-586-3136 **FAX:** 406-587-9726  
**SERVING:** Gallatin, Madison, and Park Counties
- GLASGOW:** **ADDRESS:** 222 6TH STREET SOUTH, PO BOX 1269, GLASGOW MT 59230-1269  
**PHONE:** 406-228-2561 **FAX:** 406-228-8706  
**SERVING:** Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, and Wibaux Counties
- HAVRE:** **ADDRESS:** 210 6TH AVENUE, PO BOX 1828, HAVRE MT 59501-1828  
**PHONE:** 406-265-5516 **FAX:** 406-265-2225  
**SERVING:** Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties
- HELENA:** **ADDRESS:** 1424 9TH AVE., PO BOX 201601, HELENA MT 59620-1601  
**PHONE:** 406-444-6999 **FAX:** 406-444-9317  
**SERVING:** Beaverhead, Broadwater, Deer Lodge, Jefferson, Lewis and Clark, Powell, and Silver Bow Counties
- KALISPELL:** 655 TIMBERWOLF PARKWAY, SUITE 4, KALISPELL MT 59901-1215  
**PHONE:** 406-752-2288 **FAX:** 406-752-2843  
**SERVING:** Flathead, Lake, Lincoln, and Sanders Counties
- LEWISTOWN:** **ADDRESS:** 613 NORTHEAST MAIN ST., SUITE E, LEWISTOWN MT 59457-2020  
**PHONE:** 406-538-7459 **FAX:** 406-538-7089  
**SERVING:** Cascade, Fergus, Golden Valley, Judith Basin, Meagher, Musselshell, Petroleum, and Wheatland Counties
- MISSOULA:** **ADDRESS:** 2705 SPURGIN RD., BLDG. C, PO BOX 5004, MISSOULA MT 59806-5004  
**PHONE:** 406-721-4284 **FAX:** 406-542-5889  
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**WEBSITE:** <http://dnrc.mt.gov/wrd/>